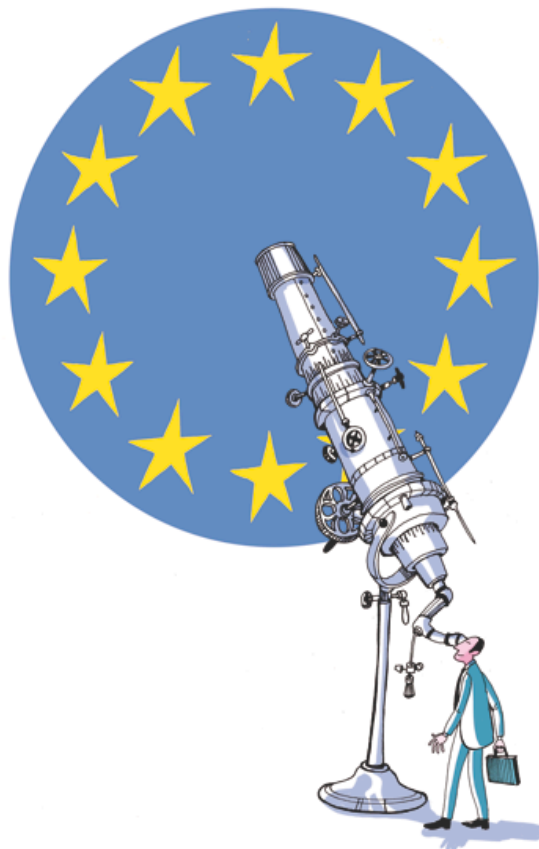




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How should the European concept of *res judicata* be applied?

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This issue is currently being addressed by the 'Corte d'Appello' of Ancona. A decision is expected soon.

The case concerns a judgement of a Munich Court which, on the facts, denied an actor's claim for damages, finding, in interim, that the contract on which the actor's claim was based is void.

In the action before the Ancona Court, the actor tries to take advantage of the German judgement, as far as the invalidity of that contract is concerned.

The problem here is that the German Court had stated that the contract was void only as a preliminary point. Because of the absence of any specific claim of the parties related to the validity of the contract the invalidity has not been taken into consideration in the operative part of the German ruling, but it is only mentioned in the reasoning as a ground leading to the decision.

At this point, the following question arises: is the German Court's statement about the validity of the contract enforceable in a subsequent Italian trial?

The Italian Supreme Court (n. 10853/2014) – referring to Articles 32 and 33 of Regulation 44/2001 EU – has stated that the Court *ad quem*, in order to decide whether a statement has legal force or not, must refer to the effective concept of *res judicata* of the country in which the judgement was pronounced.

As far as the German national legal system is concerned – according to § 322 ZPO – only the operative part of the judgement (*der Urteilstenor*) is enforceable as *res judicata*. The reasoning and the grounds which lead to the decision don't have any legal force.

The problem is that there is an autonomous European concept of *res judicata* in EU law. The European Court of Justice decision in *Gothaer* (ECJ 15.11.2012, C 456-11) shows clearly that the European concept of *res judicata* includes both the operative part and the grounds which represent the *ratio decidendi* of the judgement.

This approach could lead the Court of Ancona to a progressive decision, which would take into consideration the *ratio decidendi* of the German judgement, which seems strictly related and inseparable to the operative part.

If Ancona is to decide on this basis it would represent a further step towards a common European judicial space, inspired by the principle of mutual trust between the member states.